

No. 65

IN THE UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE
NINTH CIRCUIT.

OCTOBER TERM, 1892.

BARBEE T. BLACKBURN AND SADIE
M. BLACKBURN, *Appellants*,
vs.
CHARLES T. WOODING, *Appellee*.

} *Appeal from the United
States Circuit Court
for the Ninth Circuit,
District of Washing-
ton, Western Division.*

APPELLEE'S SUPPLEMENTAL BRIEF.

GALUSHA PARSONS, *Solicitor for Appellant*.
O. V. LINN, *Solicitor for Appellee*.

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Since preparing his brief in the above entitled cause, having received and examined a copy of appellants' brief, and feeling that the same does not contain a fair statement of the cause, respondent respectfully submits to the court the following statement of the case:

The plaintiff, B. T. Blackburn, was the owner of a fractional section (six) in township seventeen north, of range nine west, in Chehalis county, Washington, containing 574.45 acres. The Circuit Judge held that the land was the community property of said Blackburn

and a former wife, who died subsequent to the purchase of the land by said Blackburn from the United States government and prior to the issuing of a patent therefor, leaving children as heirs, and that the said children were the owners of an undivided one-half interest in said land by descent from said deceased wife.

The history of the case is as follows:

1.

MONTESANO, W. T., February 15, 1889.

B. T. Blackburn, Fall Brook, California:

Wire us forty day refusal on section six, township seventeen, range nine. C. E. JAMESON & Co.

2.

FALL BROOK, CALIFORNIA.

C. E. Jameson, Montesano, Washington:

Six thousand buys section six. B. T. BLACKBURN.

3.

MONTESANO, W. T., February 18, 1889.

B. T. Blackburn, Fall Brook, California:

Have sold; six thousand. Make warranty deed to Charles T. Wooding, and send to Aberdeen Bank. Money is deposited there. C. E. JAMESON & Co.

FALL BROOK, CALIFORNIA, February 21, 1889.

C. E. Jameson:

DEAR SIR—Your dispatch received, and contents carefully noted. I have not received my patent; only have the receipts. You say, send deed. You fill out a deed and send it with draft for six thousand dollars to West Fall Brook Banking Company, with instructions to deliver draft to me on receipt of deed delivered to them, properly signed and acknowledged.

Yours truly, B. T. BLACKBURN.

MONTESANO, March 4, 1889.

B. T. Blackburn, Fall Brook, California:

Have been away. Draft and deed leave to-day.

C. E. JAMESON & Co.

All of which communications were by telegraph, except No. 4, which was by letter.

That on the 27th day of February, 1889, B. T. Blackburn executed a power of attorney to G. F. Westfall to sell and transfer said property, and the same day Sadie M. Blackburn executed a like power of attorney to J. W. Cheatham; and the said Sadie M. Blackburn employed said J. W. Cheatham to come to Washington to look after the sale of this property. (See answer to interrogatory 3, on page 72 of record.) That the

said Cheatham came to Washington and brought with him the power of attorney from Blackburn to Westfall, and delivered the same to Westfall. That the said powers of attorney were filed for record in the auditor's office of Chehalis county, Washington, on the 11th day of March, 1889. That the said Westfall executed a deed of said property from B. T. Blackburn to Charles T. Wooding, and the same was placed of record in the auditor's office of said Chehalis county. That the complainants contend that the said deed was obtained by fraud, practiced by respondent's agents upon said Westfall, and that said deed was not executed in the presence of H. L. Gilkey, one of the subscribing witnesses; all of which is denied by respondent. That the consideration named in the deed, being one-half the amount named in Blackburn's communications, was paid to Westfall in gold coin, and he did not offer to return the same or demand a return of the deed. That complainants contend that a new contract was entered into by which respondent was to pay for said land the total sum of \$14,489, which is denied by respondent.

On the other hand, respondent contends that B. T.

Blackburn professed a willingness to convey his half interest in said property for the half of the original contract price, or \$3,000, and said the only reason he did not live up to his contract was that his wife, one of the complainants, refused to sign the deed for that amount, and wanted more for her interest in the property. That respondent made no arrangement with said Sadie M. Blackburn to purchase any interest claimed by her in said land, and respondent has always been willing to purchase the outstanding half interest whenever said B. T. Blackburn shall secure the same at the agreed price; all of which is denied by complainants.

After the execution of the deed by Westfall, respondent refused to deal with Sadie M. Blackburn. That upon the refusal of respondent to purchase the interest of Sadie M. Blackburn, the said attorneys in fact demanded of respondent the payment of the balance of what they allege to be the contract price, to wit, \$14,489, or the return of the deed, but did not offer to return the \$3,000 received. That some time afterwards complainant B. T. Blackburn tendered to Mason Irwin,

respondent's attorney, the said \$3,000, and demanded a reconveyance of the property.

At no time prior to the execution of the deed by Westfall was it indicated to respondent or his agents, or to C. E. Jameson, by complainant B. T. Blackburn or his agents, that his contract or offer to sell at \$6,000 was at an end. Respondent contends that the deed from Blackburn was delivered to his agent Thomas by the notary who took the acknowledgment in the presence of said Westfall, and when the said Westfall was standing by and consenting thereto.

As to the positions taken by the parties and their claims thereon, they are fully set forth in the pleadings and briefs of the parties.

As to the testimony upon the different points, the only way the court can get a clear knowledge of the same, on account of the contradictions, is by reviewing all the testimony.

O. V. LINN,
Solicitor for Respondent.